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Consultation on Implementing Amendments to the Aviation EU Emissions Trading System in UK Regulations

December 2017

CONSULTATION ON IMPLEMENTING AMENDMENTS TO THE AVIATION EU EMISSIONS TRADING SYSTEM IN UK REGULATIONS

The consultation and Impact Assessment can be found on the BEIS section of GOV.UK:
<https://www.gov.uk/government/consultations/aviation-eu-emissions-trading-system-proposed-amendments-to-uk-legislation>

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Any enquiries regarding this publication should be sent to us at aviationeuets.consultation@beis.gov.uk.

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General information

Purpose of this consultation

This consultation will cover UK implementation of the agreed amendments to the Aviation EU Emissions Trading System (EU ETS).¹ The consultation will be of particular interest to aircraft operators, aerodrome operators, verifiers, other participants in the EU ETS and environmental groups. This consultation is not limited to these stakeholders; any organisation or individual is welcome to respond.

Issued: 8 December 2017

Respond by: 5 January 2018

Enquiries to:

Emissions Trading & Industrial Decarbonisation Team
Department for Business, Energy and Industrial Strategy
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1 Victoria Street
London
SW1H 0ET
Tel: 0300 068 4000
Email: aviationeuets.consultation@beis.gov.uk

Consultation reference: Consultation on Implementing Amendments to the Aviation EU Emissions Trading System in UK Regulations

Territorial extent

This consultation relates to the United Kingdom.

¹ Resulting from the final agreement on a Regulation of the European Parliament and of the Council amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021

How to respond

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. The preferred method of response is to complete the online form via this Citizens Space webpage at the following link:

<https://beisgovuk.citizenspace.com/heat/aviation-eu-emissions-trading-system>

Responses and enquiries can be also be sent via post or email to the addresses below:

Emissions Trading & Industrial Decarbonisation Team
Department for Business, Energy and Industrial Strategy
6th Floor, Abbey 2
1 Victoria Street
London
SW1H 0ET
Tel: 0300 068 4000

Email: aviationeuets.consultation@beis.gov.uk

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Respondents in Northern Ireland, Scotland, and Wales are requested to copy their responses to:

For Northern Ireland

By email: climate.change@daera-ni.gov.uk

By post: Climate Change Unit
Environmental Policy Division
Department of Agriculture, Environment and Rural Affairs
2nd Floor, Klondyke Building,
Cromac Avenue,
Gasworks Business Park,
Malone Lower
Belfast BT7 2JA

For Scotland

By email: climate.change@scotland.gsi.gov.uk

By post: Climate Change Division
Scottish Government
Climate Change Division
Area 1D South
Victoria Quay
Edinburgh
EH6 6QQ
Enquiries: 0131 244 7815

For Wales

By email: decarbonisationmailbox@gov.wales

By post: Carbon Trading and Climate Risk Branch

Department for Environment and Rural Affairs

Welsh Government

Floor 1 East Cathays Park

Cardiff, CF10 3NQ

Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at:

<https://www.gov.uk/government/consultations/aviation-eu-emissions-trading-system-proposed-amendments-to-uk-legislation>

Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on the [GOV.UK website](https://www.gov.uk). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the [Government's Consultation Principles](#).

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

Email: beis.bru@beis.gov.uk

Executive Summary

On 18 October 2017 agreement was reached between the European Commission, the European Parliament and the Council (composed of Member States) on the future of the Aviation EU Emissions Trading System (ETS). It was agreed that the derogation, which expired on 31 December 2016, to limit the scope of the scheme to flights between airports in the European Economic Area (EEA) only, known as the intra-EEA scope, should be extended until 31 December 2023. Agreement was also made to introduce simplified procedures for operators emitting less than 3,000 tonnes of CO₂ per year on intra-EEA flights; and to extend the exemption from obligations under the Aviation EU ETS until 2030 for small emitters (non-commercial operators emitting less than 1,000 tonnes of CO₂ per year).

The agreement also included a requirement for the European Commission to conduct a review of the implementation of the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), agreed in the International Civil Aviation Organisation (ICAO) Assembly in October 2016, and, based on the findings of this review, put forward a proposal on the future rules on flights within the EEA.

It is expected that the new EU Regulation will be published in the Official Journal of the European Union and come into force by the end of 2017. The new Regulation must be implemented into UK legislation by 31 March 2018 to ensure an intra-EEA scope is in place in time for the 2017 scheme year. This will be done through amendments to the UK Greenhouse Gas Emissions Trading Scheme Regulations 2012 (as amended), “the 2012 Regulation”.

Specifically, UK regulations require amending to provide for an extension to the existing scope; introduce simplified procedures for operators emitting less than 3,000 tonnes; and extend the exemption for small emitters.

The EU-level agreement also included an amendment that could have made allowances issued by the UK from 1 January 2018 invalid for compliance in the EU ETS. Following further discussions at the EU level it was agreed that UK allowances will not be marked and will continue to be valid for compliance, once UK domestic legislation is in place to bring forward the 2018 compliance deadlines to before the date of EU Exit. The relevant legislation will enter into force on 27 December.²

As set out in the Clean Growth Strategy, the UK Government is considering the UK’s future participation in the EU ETS after our exit from the EU. Whatever our future relationship with the EU, we will seek to ensure that our future approach is at least as ambitious as the existing scheme and provide a smooth transition for the relevant sectors. The amendments covered under this consultation are without prejudice to future decisions on the UK’s future relationship with the EU on the EU ETS.

² The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2017 available at https://www.legislation.gov.uk/uksi/2017/1207/pdfs/ukxi_20171207_en.pdf

Introduction

Civil aviation contribution to global and national greenhouse gas (GHG) emissions

1. Globally, the civil aviation sector is responsible for approximately 2% of carbon dioxide (CO₂) emissions.³ By comparison, this would rank it among the world's top 10 emitters, in terms of countries.⁴
2. In the UK, domestic and international aviation emissions account for approximately 6% of total GHG emissions, which is about 22% of the transport sector's total GHG emissions.⁵ Aviation, however, is likely to make up an increasing proportion of the UK's total GHG emissions in the future, as other sectors decarbonise more quickly in the near term.

Decarbonising aviation

3. The UK Government's objective is to ensure that the aviation sector continues to make a proportionate and cost-effective contribution towards reducing global GHG emissions. The UK Government's position is that action to tackle emissions from international aviation is best taken at the international level, as aviation is an international industry. Global action allows for progress in reducing aviation's climate change impacts, whilst minimising the risks of competitive disadvantage to the UK aviation industry and the risks of carbon leakage.
4. The EU ETS was established under European Directive 2003/87/EC to promote cost-effective reductions in GHG emissions across the power and heavy industry sectors. It supports the UK and EU's commitment to a global carbon market as a key instrument for tackling climate change, and is a central instrument in enabling the achievement of the EU's goal of a 20% reduction in emissions by 2020, compared to 1990 levels.⁶
5. The EU ETS is a cap-and-trade system under which there is a limit ("cap") on total emissions and those covered by the system need to surrender carbon allowances in line with their annual emissions. Some allowances are allocated to operators for free, some auctioned, and others available for allocation to new entrants. Participants in the scheme must report their emissions for a given calendar year by 31 March the following year and surrender allowances by 30 April. To provide clarity on 2018 compliance ahead of the date of EU Exit, the deadlines for reporting emissions and surrendering

³ Air Transport Action Group facts and figures, available at: <http://www.atag.org/facts-and-figures.html>

⁴ Reducing Emissions from Aviation, European Commission. - available at: https://ec.europa.eu/clima/policies/transport/aviation_en

⁵ National Atmospheric Emissions Inventory available at: <http://naei.beis.gov.uk/data>

⁶ Directive 2003/87/EC - available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003L0087>

allowances in the UK will be brought forward to 11 March 2019 and 15 March 2019 respectively.⁷

Decision to include aviation in the EU ETS

6. In 2008, the EU added aviation to the scope of the EU ETS. The Directive to include aviation in the EU ETS (2008/101/EC) entered into force on 2 February 2009, and aviation was fully included from 1 January 2012.⁸
7. The Directive initially included in scope all flights into or out of airports in the EEA (e.g. a flight between New York and London), known as “full scope”.

The ‘Stop the Clock’ decision

8. In response to opposition to this scope, and in order to promote a broader international agreement at ICAO, the EU temporarily reduced the scope of the Aviation EU ETS to only include flights between EEA airports (known as “intra-EEA scope”) for the 2012 compliance year under the “Stop the Clock” decision.⁹ It was subsequently agreed that the “intra-EEA scope” should be extended for 2013 until 2016. The full scheme would then automatically resume in 2017, subject to a European Commission-led review in 2016 to take account of developments at the 2016 ICAO Assembly.

Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)

9. In October 2016, at the 39th ICAO Assembly, 191 States agreed to implement the CORSIA.¹⁰
10. Under the scheme, qualifying aircraft operators must offset their CO₂ emissions with the aim of delivering ICAO’s goal of carbon neutral growth for the sector from 2020.
11. The CORSIA comes into effect in stages from 2021. While participation in the pilot phase (2021-2023) and phase one (2024-2026) is voluntary, initial coverage is likely to be substantial. As of 23 August 2017, 72 States representing more than 87% of international aviation activities have announced their intention to participate in the voluntary phases.¹¹ Phase two of the CORSIA will apply from 2027 to 2035 to all States that exceed a certain threshold based on their share of international aviation activities, with exemptions for some developing States.¹²
12. The detail on how to implement the scheme is currently being developed, including work on monitoring, reporting and verification of emissions; registries; criteria for eligible emissions units; and sustainable alternative fuels. The final package of

⁷ The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2017 available at: https://www.legislation.gov.uk/uksi/2017/1207/pdfs/uksi_20171207_en.pdf

⁸ Directive 2008/101/EC - available at: <https://www.eea.europa.eu/policy-documents/directive-2008-101-ec>

⁹ The Stop the Clock decision – available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013D0377>

¹⁰ ICAO General Assembly Resolution A39-3 - available at: https://www.icao.int/environmental-protection/Documents/Resolution_A39_3.pdf

¹¹ ICAO CORSIA information page - available at: <https://www.icao.int/environmental-protection/Pages/market-based-measures.aspx>

¹² What is CORSIA and how does it work? - available at https://www.icao.int/environmental-protection/Pages/A39_CORSIA_FAQ2.aspx

implementation material is expected to be adopted by the ICAO Council in summer 2018.

Implications of EU Exit

13. On 23 June 2016, the EU referendum took place and the people of the UK voted to leave the EU. Until exit negotiations are concluded, the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. The outcome of the exit negotiations will determine what arrangements apply in relation to EU legislation once the UK has left the EU. As the Clean Growth Strategy sets out, the UK Government is considering the UK's future participation in the EU ETS after our exit from the EU and we remain firmly committed to carbon pricing as an emissions reduction tool, whilst ensuring energy and trade intensive businesses are appropriately protected from any detrimental impacts on competitiveness.¹³ Whatever our future relationship with the EU, we will seek to ensure that our future approach is at least as ambitious as the existing scheme and provide a smooth transition for the relevant sectors.

¹³ Clean Growth Strategy - available at: <https://www.gov.uk/government/publications/clean-growth-strategy>

EU negotiations following ICAO agreement

14. In light of the ICAO agreement in 2016, the European Commission published a proposal in February 2017 to continue the current intra-EEA scope and to prepare for the implementation of CORSIA from 2021. After negotiations between the European Commission, European Parliament and Council (composed of the Member States), a compromise agreement was reached on 18 October 2017. This will be adopted by the European Parliament and the Council by the end of the year and is expected to be published in the Official Journal of the EU in late 2017 or in early 2018. The main elements of the agreement are as follows:

Scope

- Between 1 January 2017 and 31 December 2023, the Aviation EU ETS will only cover emissions from flights between two EEA airports (i.e. intra-EEA flights). This will be subject to the review described below.¹⁴

Review

- Before 1 January 2019, and regularly thereafter, the European Commission shall report to the Council and European Parliament on progress by ICAO to implement CORSIA.
- Within 12 months of the rules of CORSIA being adopted in ICAO, the European Commission shall present a report to the Council and the European Parliament in which it shall consider ways for the CORSIA to be implemented into EU legislation. The report shall consider the environmental integrity and ambition of CORSIA and shall be accompanied by proposals on the future rules on intra-EEA flights.

Monitoring, reporting and verification for CORSIA

- The European Commission shall adopt provisions for the monitoring, reporting and verification of emissions for the purpose of implementing CORSIA within the EEA.

Provisions for small emitters

- The exemption for non-commercial operators emitting less than 1,000 tonnes CO₂ per annum based on total emissions at full scope, which was due to end on 31 December 2020, will be extended until 31 December 2030.
- In order to further reduce administrative burden, aircraft operators with emissions lower than 3,000 tonnes CO₂ per annum on intra-EEA flights will have the option to consider their emissions verified if they are determined using the small emitters tool approved under Commission Regulation (EU) No 606/2010 and their emissions report is populated by data from the Eurocontrol Support Facility (i.e. no requirement for independent verification). This provision would also remain in effect for operators with full scope emissions of less than 25,000 tonnes CO₂ per annum.

¹⁴ EEA airports include aerodromes in the 28 EU Member States as well as Norway, Iceland and Liechtenstein.

Allocation of allowances, auctioning, special reserve

- The percentage of aviation allowances to be auctioned remains at 15%. The percentages freely allocated and set aside for the special reserve will remain at 82% and 3% respectively.
- The European Commission will conduct a study on the auctioning of allowances in the aviation sector with a view to making a proposal to increase the auctioning share as part of the review, described above.
- Up until the end of 2020, the number of allowances allocated to aviation operators will correspond to those issued in 2016.
- The Linear Reduction Factor (LRF) set in the EU ETS Directive, which determines how much the cap decreases each year but currently only applies to emissions from stationary installations, will be applied to the aviation cap from 1 January 2021. This provision will be subject to the review. Negotiations on the LRF itself are being conducted separately.
- From 2021 there will be an end to the distinction between aviation allowances and allowances for other EU ETS sectors.

Validity of EU ETS allowances

- The agreement included an amendment that could have made allowances issued by the UK from 1 January 2018 invalid for compliance in the EU ETS. The objective was to protect the environmental integrity of the EU ETS in the event of a UK departure from the system in March 2019. At the Climate Change Committee meeting on 30 November¹⁵ implementing legislation was agreed that means allowances issued by the UK from January 2018 will continue to be valid for compliance, once UK domestic legislation is in place to bring forward the 2018 EU ETS compliance deadlines to before the date of EU Exit. This legislation was laid before Parliament on 6 December and will come into force on 27 December.¹⁶

¹⁵ European Commission press release following Climate Change Committee meeting on 30 November available at: https://ec.europa.eu/clima/news/climate-change-committee-approves-safeguard-measures-eu-emissions-trading-system_en

¹⁶ *The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2017* available at: https://www.legislation.gov.uk/uksi/2017/1207/pdfs/uksi_20171207_en.pdf

Proposal: Amendment of the Greenhouse Gas Emissions Trading Scheme Regulations 2012

Introduction and general principles

1. The purpose of this consultation is to seek views on proposed amendments to the 2012 Regulations to incorporate changes to the Directive agreed by the Commission, European Council and European Parliament (see paragraph 14 of this consultation document).
2. The proposed amendments are in the draft Statutory Instrument attached as an accompanying document to this consultation document.
3. The consultation runs for four weeks until 5 January 2018. Please note that any responses received after the closing date may not be considered.
4. Following the consultation the UK Government proposes to lay regulations (the “Amending Regulations”) before Parliament with the intention that they take effect from 31 March 2018.
5. The Amending Regulations are required to provide for an extension to the existing derogation (i.e. excluding flights between an EEA airport and an airport outside the EEA, and flights between an EEA airport and an outermost region). Although it is proposed the Amending Regulations will come into force on 31 March 2018, they extend the derogation from the end of 2016. The Amending Regulations also introduce simplified procedures for operators emitting less than 3,000 tonnes of CO₂ per annum on intra-EEA flights; and extend the exemption until 2030 for non-commercial operators emitting less than 1,000 tonnes of CO₂ per annum.

Overview of the Amending Regulations

Extension to the reduced scope derogation

6. In order to implement the updated derogation, these Amending Regulations update the intra-EEA scope end date to the 31st December 2023.
7. The following provisions in the 2012 Regulations will be updated to reflect the fact that the derogation is being extended from the end of 2016 to 31 December 2023:
 - a. The provisions to apply for an emissions plan in regulations 32, 32A, and 32B.
 - b. The requirement to notify the regulator if an emissions plan is not applied for in regulation 33A.
 - c. Provisions for monitoring and reporting emissions, where obligations to monitor aviation emissions and submit a verified report do not apply in regulation 35.
 - d. The date with respect to surrendering allowances in regulation 42A and 42B.

Simplified procedures for operators

8. The Amending Regulations will update regulation 35(7), to include a provision for aircraft operators with emissions lower than 3,000 tonnes CO₂ per annum from intra-EEA flights to benefit from the use of a small emitters tool approved under Commission Regulation (EU) No. 606/2010 for the verification of their emissions. While making this change, the wording will be amended to more closely reflect the language in the Directive, simply for clarity.

Exclusions

9. In respect of the exemption for non-commercial operators emitting less than 1,000 tonnes of CO₂ per annum (termed “exempt non-commercial air transport operators”), the EU Regulation has implemented this by amending the definition of “aviation activities” in the original ETS Directive, to exclude operators carrying out these activities from having any obligations under the Directive until 2030. The Amending Regulations will therefore amend the reference in Schedule 7(1A)(b) to the disapplication of this exclusion, to ensure it is clear it applies after 2020 (The Directive makes it clear this exclusion is due to end after 2030).

Consultation Questions

1.	Do you agree with the proposed approach to amending the Greenhouse Gas Emissions Trading Scheme Regulations 2012? If no, please explain why.
2.	Do you believe there is an alternative method, other than what is proposed here, of implementing the agreed changes into UK law? If so, please outline your suggested method.
3.	Are there parts of the proposal to amend the Greenhouse Gas Emissions Trading Scheme Regulations 2012 where further clarity is needed? If so, please explain.
4.	Are you able to provide any additional evidence relating to the impacts which the accompanying UK Impact Assessment has not taken into account? If so, please state these e.g. impacts on the competitiveness of your business and/or your aircraft operations in comparison to others.

